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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 533 of 2013

Order reserved on 24.07.2019

Order pronounced on 19.12.2019

- Vijay Kumar Patel S/o Shyam Lal Patel Aged About 35 Years, Occupation Tractor Owner, R/o Lebda, Post - Kachchar, P.S. Bhupdevpur, Tahsil & Civil & Revenue District Raigarh (C.G.)

---- Petitioner

Versus

1. Manjulata Rathia, W/o Late Nathu Rathia, Aged About 32 Years, Caste Kanwar, Occupation House wife,
2. Minor Rajkumari D/o Late Nathu Rathia, aged about 14 years, through guardian mother Manjulata Rathia,
3. Minor Tulsi D/o Late Nathu Rathia, aged about 10 years, through Guardian mother Manjulata Rathia,

   All R/o Pipermar, Ward No. 3, Tahsil and Thana-Dharamjaigarh, District. Raigarh (C.G.)
4. Bajaj Allianz General Insurance Company Limited, Branch Office-Raipur, (C.G.) Thana Raipur, Shiv Mohan Bhandari, Raipur (C.G.).
5. Santosh Majhwar, S/o Nahiyar Sai, aged about 27 years, R/o Village Pipermar, Ward No. 3, Tahsil Dharamjaigarh, Thana Dharamjaigarh, District Raigarh (C.G.).

For Appellant/s	: Mr. Suresh Verma, Advocate
For Respondents No.1 to 3	: Mr. Hemant Kumar Patel, Advocate.
For Respondent No.4	: Mr. D.L. Dewangan, Advocate.
For Respondent No.5	: None.

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Order

This appeal under Section 173 of the Motor Vehicle Act 1988 has been filed by defendant No.1/owner against the judgment and award dated 31.01.2013 passed by Motor Accident Claims Tribunal, Raigarh in Claim Case No.86/2009, whereby the Claims Tribunal has partly allowed the claim petition and held that on the date of accident driver of the vehicle was having no effective and valid driving licence and while exonerating the Insurance Company from its liability.

2. Facts of the case in brief, are that on 01.06.2009 deceased Nathu Rathia was dashed by driver Santosh (respondent No.5 herein) due to rash and negligent driving of the offending vehicle tractor number CG 13-A-3632 and Trolly No.CG-13-A-3635. On account of death of Nathu Rathia the appellants No.1 and 3 have filed claim petition under Section 166 of the Motor Vehicle Act claiming compensation.

3. Respondent No.5 - driver and respondent No.1/appellant herein owner of offending vehicle has pleaded that at the time of accident, the offending vehicle was insured with respondent No.4 - Insurance Company herein and the driver of the offending vehicle was having valid and effective driving licence on the date of incident.

4. Respondent No.4 - Insurance Company filed its reply and denied the said claim. It has been pleaded that the driver at the time of accident was having no effective and valid driving licence and therefore, Insurance Company is not liable to indemnity the insured.

5. The Claim Tribunal after considering the pleadings and evidence placed on record (oral and documentary both) by the respective parties has partly allowed the claim of the appellants and awarded compensation of Rs.2,92,000 /- with interest @ 6% per annum to the claimant.

6. While partly allowing the claim petition learned Claims Tribunal made respondent No.1 - Vijay Kumar Patel and respondent No.2 Santosh Majhwar liable to pay compensation to the claimants jointly and severally and exonerated the Insurance Company of its liability to indemnify the insured on the ground that on the date of incident, driver was not authorized to drive the offending vehicle.

7. I have heard learned counsel for the parties and perused the entire record carefully.

8. Santosh (D.W.1) driver and Vijay Kumar Patel (D.W.-2) owner of the vehicle admitted in his deposition that the license Ex-A-6 held by the

driver Santosh (D.W.1). Santosh has clearly stated in paragraph 3 of his cross-examination that the driving license (Ex-A-6) which was issued on 03.07.2009 is valid till 02.07.2012.

9. Driving license (Ex-A-6) and information received from Regional Transport Officer, Durg on 31.08.2012 it is revealed that licence of driver Santosh is renewed from 21.11.2002 till 21.11.2005, 21.11.2005 till 21.11.2008 and then 03.07.2009 till 02.07.2012. Hence it is clear that from 21.11.2008 till 02.07.2009 licence of the driver was not renewed.

10. Section 15 (1) of the Act and the first proviso appended thereto reads as under:-

> **"15. Renewal of driving license :- (1) Any lincesing authority may on application made to it, renew a driving license issued under the provision of this Act with effect from the date of expiry :**
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> **Provided that in any case where the application for the renewal of a license is made more than thirty days after the date of its expiry, the driving license shall be renewed with effect from the date of its renewal:**
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> *** * * "**

11. From a bare perusal of the said provision, it would appear that the license is renewed in terms of the said Act and the rules framed thereunder. The proviso appended to Section 15(1) of the Act in no uncertain terms states that whereas the original license granted despite expiry remains valid for a period of 30 days from the date of expiry if any application for renewal thereof is filed thereafter, the same would be renewed from the date of its renewal. The accident took place on 01.06.2009. As on the said date, the renewal application has not been filed, the driver did not have a valid license on the date when the vehicle met with an accident.

12. Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Vidhyadhar Mahariwala** reported in **(2009) 1 SCC (Cri) 463** held as under:-

> 8. In Swaran Singh's case, (2004) 3 SCC 297, whereupon the respondent no.2 relied, it was held as follows:-
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> "45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.
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> 46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."
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> 9. In Kusum Rai's case, (2006) 4 SCC 250, it was held as follows:
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> "14. This Court in Swaran Singh (2004 (3) SCC 297) clearly laid down that the liability of the Insurance Company vis-`-vis the owner would depend upon several factors. The owner would be liable for payment of compensation in a case where the driver was not having a licence at all. It was the obligation on the part of the owner to take adequate care to see that the driver had an appropriate licence to drive the vehicle. The question as regards the liability of the owner vis-`-vis the driver being not possessed of a valid licence was considered in Swaran Singh stating: (SCC pp. 336-37, para 89)
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> '89. Section 3 of the Act casts an obligation on a driver to hold an effective driving licence for the type of vehicle which he intends to drive. Section 10 of the Act enables the Central Government to prescribe forms of driving licences for various categories of vehicles mentioned in sub-section (2) of the said

section. The various types of vehicles described for which a driver may obtain a licence for one or more of them are: (a) motorcycle without gear, (b) motorcycle with gear, (c) invalid carriage, (d) light motor vehicle (e) transport vehicle, (f) road roller, and (g) motor vehicle of other specified description. The definition clause in Section 2 of the Act defines various categories of vehicles which are covered in broad types mentioned in sub-section (2) of Section 10. They are `goods carriage', `heavy goods vehicle', `heavy passenger motor vehicle', `invalid carriage', `light motor vehicle', `maxi-cab', `medium goods vehicle', `medium passenger motor vehicle', `motor-cab', `motorcycle', `omnibus', `private service vehicle', `semi-trailer', `tourist vehicle', `tractor', `trailer' and `transport vehicle'. In claims for compensation for accidents, various kinds of breaches with regard to the conditions of driving licences arise for consideration before the Tribunal as a person possessing a driving licence for `motorcycle without gear', [sic may be driving a vehicle] for which he has no licence. Cases may also arise where a holder of driving licence for `light motor vehicle' is found to be driving a `maxi- cab', `motor-cab' or `omnibus' for which he has no licence. In each case, on evidence led before the Tribunal, a decision has to be taken whether the fact of the driver possessing licence for one type of vehicle but found driving another type of vehicle, was the main or contributory cause of accident. If on facts, it is found that the accident was caused solely because of some other unforeseen or intervening causes like mechanical failures and similar other causes having no nexus with the driver not possessing requisite type of licence, the insurer will not be allowed to avoid its liability merely for technical breach of conditions concerning driving licence.'

10. Nanjappan's case, (2004), 4 SCC 224, was referred to in Kusum Rai's (supra).

11. In Ishwar Chandra's case, (2007), 10 SCC 650, the three decisions referred to by the High Court were considered and it was held that the insurance company would have no liability in the case of this nature. We are in agreement with the view. The appeal deserves to be allowed which we direct. The impugned order of the High Court is set aside. It is open to the claimant to recover the amount from respondent No.2."

13. In this view of the matter, there is no merit in this appeal, which is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay/Pawan